IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

Crl.Rev.Pet.No. 3630 of 2007()

CRA.1002/2006 of ADDL. DISTRICT & SESSIONS (ADHOC-III), N.PARAVUR
ST.4537/2003 of JUDL.MAGISTRATE OF FIRST CLASS, N.PARAVUR

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REVN. PETITIONER: APPELLANT/ACCUSED

THOMAS, S/O. DEVASSY,
VELLIKKAKATHU VEED, KIZHAKKUMPURAM MURI,
CHENDAMANGALAM VILLAGE, N.PARUR.

BY ADV. SRI.TITUS MANI VETTOM
SRI.SURAJ SUKUMARAN (PALATHANATHU)

RESPONDENTS: RESPONDENTS IN APPEAL/COMPLAINANT

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1. VARGHESE, S/O. OUSO,
THOTTUNKAL VEED, KIZHAKKUMPURAM MURI,
CHENDAMANGALAM VILLAGE, N.PARUR.

2. STATE OF KERALA, REPRESENTED BY
ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 30/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 3630 of 2007

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Dated this the 29th day of October, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in ST. No.4537 .of 2003 on the file of the J.F.C.M, N. Paravur challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner made the following further submissions before me:-

This is a case in which Ext.P1 cheque was entrusted by the revision petitioner with one Durga for a specific amount of Rs.12,000/- while the revision petitioner availed a loan from her. The said cheque has been misutilised and fraudulently corrected as Rs.72,000/- instead of Rs.12,000/- and converted into a cheque in which the complainant's

name has been type written as the payee thereunder. After availing the loan of Rs.12,000/- from Durga, the petitioner had repaid a sum of Rs.10,000/- in February 2003 leaving a balance of Rs. 2000/- for which the said Durga had undertaken to return the cheque leaf. Thereafter, the petitioner approached her with the balance amount and requested her to return the cheque, she told him that she had lost the cheque leaf from her possession. It was subsequently discovered by the revision petitioner that the complainant who is the co-brother of the said Durga had somehow or other managed to secure possession of the said cheque leaf and had filed the present complaint after making dishonest correction in the amount. The revision petitioner has been deprived of an opportunity to substantiate his defence.

5. I am afraid that I cannot agree with the above submission. If as a matter of fact the cheque in question was a signed blank cheque with the sum of Rs.12,000/- written only in figures and entrusted with a woman by name Durga while availing of a loan of Rs.12,000/-, the petitioner came to know from the statutory notice issued in this case that the present custodian of the cheque was not Durga but the complainant namely Varghese. As a reasonable and prudent man, the revision petitioner should have reacted very violently towards Durga who was betraying the confidence reposed in her by the revision petitioner while entrusting the signed cheque leaf with her. The said Durga would have been the most competent person to confirm or deny the entrustment of the cheque leaf. But, for reasons best known to the revision petitioner, he did not examine the said Durga nor did he take any steps against her not to speak of issuing at least a lawyer notice given. A perusal of the Ext.P1 cheque does not show that the amount Rs.12,000/- written in figures has been altered to Rs.72,000/-. The

first digit namely 'one' does not appear to have been corrected as 'seven' by putting two parallel lines at top and at the middle in different ink as alleged by the revision petitioner. What has been written in words is Rs. 72,000/-. No doubt, the name of the payee is type written, but that does not render the cheque suspicious. In the light of the defence set up by the revision petitioner and his conduct in not initiating any action against the lady with whom he had entrusted, the cheque, it is clear that the defence set up by the revision petitioner cannot be accepted for a moment. Both the courts below had no hesitation to reject the defence set up by the revision petitioner while entering the findings of guilt .

6. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

7. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. The sentence imposed on the revision petitioner is set aside and instead he is sentenced to pay fine of Rs.44,000/-(Rupees Forty four thousand only) (giving credit to the sum of Rs.28,000/- deposited by the revision petitioner before the trial Court pursuant to the orders passed by the First Appellate Court and which amount shall be

permitted to be withdrawn by the 1st respondent/complainant) which shall be deposited within **four** months from today and on default to make the payment, he shall suffer simple imprisonment for three months. The fine amount shall be paid as compensation under Section 357(1) Cr.P.C.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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